

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-1118

76-1118

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-against-

JEROME MACKEY, et al.,

Defendant-Appellant

WILLIAM NELSON,

Appellant.

APPENDIX FOR APPELLANT WILLIAM NELSON

ON APPEAL FROM A JUDGMENT
OF CONVICTION ENTERED IN
THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

DAVID W. McCARTHY, ESQ.
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Cr. No.
100-107, D.S.D., (1-41) and (2)

- against -

JEROME H. HENRY, EDWARD E. TAYLOR
and WILLIAM NELSON, LA-5.

Defendants.

THE GRAND JURY OF THE:

SOUTHERN DISTRICT OF NEW YORK:

1. At all times material herein, the defendant JEROME HENRY was President of Radio Corporation, Inc.
2. At all times material herein, the defendant EDWARD E. TAYLOR was Vice President of Radio Corporation, Inc.
3. At all times material herein, the defendant WILLIAM NELSON was Secretary-Treasurer of Radio Corporation, Inc.
4. At all times material herein, Radio Corporation, Inc. was a corporation organized and existing under the laws of the State of New York with offices at 177 Fulton Street, 11th Floor, New York, and purported to engage in the business of selling stereo tape distributions.
5. Commencing on or about April 1, 1932, and continuing thereafter until at least March 1, 1934, the exact date being unknown to the grand jury, within the Eastern District of New York, the defendants JEROME HENRY, EDWARD E. TAYLOR, and WILLIAM NELSON did knowingly and wilfully devise and intend to use a scheme and artifice to defraud prospective stereo tape distributors and

to obtain money from these distributors by means of false and fraudulent pretenses, representations, and promises, all of which at the time that the pretenses, representations, and promises were made and were false and fraudulent when made, which fact and office is set forth hereinafter.

6. It was part of the scheme and artifice that the defendants FLORE MACKEY, RICHARD B. MACKEY, and WILLIAM E. NELSON would and did start a distributorship business under the name of Mackey Distributors, Inc., in which they would sell stereo tape distributorships to prospective distributors.

7. It was a further part of the scheme and artifice that the defendants FLORE MACKEY, RICHARD B. MACKEY, and WILLIAM E. NELSON would and did cause advertisements, offering to sell stereo tape distributorships, to be placed in various newspapers through out the United States to attract prospective distributors.

8. It was a further part of the scheme and artifice that the persons responding to the advertisements would be induced to purchase stereo tape distributorships, and would be told that the nature of the business was as follows:

(a) Each distributor would purchase and install each cabinet 40 stereo tapes.

(b) The cabinet would be located in various homes and places of business by "personal locaters" employed by Mackey Distributors, Inc.

(c) The minimum number of cabinets sold to a distributor would be ten, and the cost to the distributor for the ten cabinets containing a total of 400 tapes placed in ten locations would be approximately \$2,275.

(d) The merchants on behalf of the distributor would display the cabinets in their stores and sell the tapes to the

(e) From time to time the distributor would stock the cabinets with other goods, such as tape, and other goods where the cabinets were located, and the goods would be sold.

(f) It was a further part of the plan that the distributor would be paid for the goods sold, and the distributor would be paid for the goods sold.

9. It was a further part of the plan that the distributor would be paid for the goods sold, and the distributor would be paid for the goods sold.

10. It was a further part of the plan that the distributor would be paid for the goods sold, and the distributor would be paid for the goods sold.

(a) That the distributor would be paid for the goods sold, and the distributor would be paid for the goods sold.

(b) That the distributor would be paid for the goods sold, and the distributor would be paid for the goods sold.

(c) That the distributor would be paid for the goods sold, and the distributor would be paid for the goods sold.

(d) That the distributor would be paid for the goods sold, and the distributor would be paid for the goods sold.

(e) That the distributor would be paid for the goods sold, and the distributor would be paid for the goods sold.

11. It was a further part of the plan that the distributor would be paid for the goods sold, and the distributor would be paid for the goods sold.

NELSON would and did cause literature to be prepared and furnished to prospective distributors, which literature contained fraudulent representations of Mackey Distributors, Inc., and a wholly owned subsidiary, 1000 Mackey Distributors, Inc., which was well known at the time that this representation was made and was false and fraudulent when made.

12. It was a further part of the scheme and artifice that the defendants JEROME MACEY, RICHARD E. TAYLER, and WILLIAM NELSON would and did cause prospective distributors to be furnished with a list of references of purportedly successful distributors of Mackey Distributors, Inc., and that the said willfully fraudulent representations would be made to prospective distributors by two of the references, these defendants well knowing at the time that the representations would be and were false and fraudulent when made:

(a) That these two references were distributors of Mackey Distributors, Inc.;

(b) That their distributorships were successful.

13. It was a further part of the scheme and artifice that when distributors inquired as to why Mackey Distributors, Inc., had not performed the terms of the distributorship contract, the defendants JEROME MACEY, RICHARD E. TAYLER, and WILLIAM NELSON would and did make and cause to be made false and fraudulent explanations to the distributors concerning their failure to perform in order to still the distributors, well knowing at the time that the explanations would be and were false and fraudulent when made.

14. In or about each of the dates hereinafter set forth, within the Eastern District of New York, for the purpose of executing the scheme and artifice aforesaid to do so, the defendants JEROME MACEY, RICHARD E. TAYLER, and WILLIAM NELSON caused

their advertising agent to place a post office and authorized
 deposit of the advertisement in the post office, with an
 envelope containing the advertisement, to be sent by the
 United States Postal Service to the following addresses:
 Counts One through Ten.

Count One	August 11, 1971	Mr. J. R. [unclear] 411 [unclear] Minneapolis, Minn. 55415
Count Two	August 20, 1971	Mr. J. R. [unclear] 411 [unclear] Minneapolis, Minn. 55415
Count Three	August 21, 1971	Mr. J. R. [unclear] 411 [unclear] Minneapolis, Minn. 55415
Count Four	August 22, 1971	Mr. J. R. [unclear] 411 [unclear] Minneapolis, Minn. 55415
Count Five	August 23, 1971	Mr. J. R. [unclear] 411 [unclear] Minneapolis, Minn. 55415
Count Six	August 24, 1971	Mr. J. R. [unclear] 411 [unclear] Minneapolis, Minn. 55415
Count Seven	August 25, 1971	Mr. J. R. [unclear] 411 [unclear] Minneapolis, Minn. 55415
Count Eight	August 26, 1971	Mr. J. R. [unclear] 411 [unclear] Minneapolis, Minn. 55415
Count Nine	August 27, 1971	Mr. J. R. [unclear] 411 [unclear] Minneapolis, Minn. 55415
Count Ten	August 28, 1971	Mr. J. R. [unclear] 411 [unclear] Minneapolis, Minn. 55415
Count Eleven	August 29, 1971	Mr. J. R. [unclear] 411 [unclear] Minneapolis, Minn. 55415
Count Twelve	August 30, 1971	Mr. J. R. [unclear] 411 [unclear] Minneapolis, Minn. 55415

Third	October 10, 1941	Franklin D. Roosevelt 3717 14th Avenue Brooklyn, New York
Fourth	November 1, 1941	Edith Wilson, President White House, Washington Washington, D.C. 20501
Fifth	December 11, 1941	Generalissimo Gen.issimo Chiang Kai-shek 100-100, Chungking 40002

in violation of Title 18, United States Code, Sections
1341 and 2.

Form No. 100

CRIMINAL DOCKET

WEINSTEIN.

75. 8/1

TITLE OF CASE

THE UNITED STATES

JEROME J. MOORE and RICHARD H. TAYLOR
and WILLIAM J. HANCOCK

ATTORNEYS

For U.S. H. FRIEDMAN

MACKEY - M. Wolf 1 01

Country Road- Carle Pl

N.Y. (516) 248-0600

de Fr. NELSON; (court of

David McCarthy

1527 Franklin Ave
 Washington, DC 20001

916-746-1616

For Defendant: **TAYLOR**

2003 E. 15th Street T

Okleborna (919) 932 4

Oklahoma - (918) 932-4

part of the counsel: No 160

David M. McCarthy

DAVID W. MCCARTHY

Did devise a scheme to defraud prospective stereo tape distributors & to obtain money by means of false pretenses.

CASH RECEIVED AND DISBURSED

ABSTRACT OF COSTS		CASH RECEIVED AND DISBURSED	
AMOUNT	DATE	NAME	RECEIVED
Fine,			
Clerk,			
Marshal,			
Attorney,			
Commissioner's Court,			
Witnesses,			

BEST COPY AVAILABLE

DATE _____

PROCEEDINGS

- | | |
|----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| ① 6-5-75 | Before JUDD, J- Indictment filed |
| 6/23/75 | Before WEINSTEIN, J.- Case called- Defts Mackey and Taylor present with counsel-Mr. Holmes admitted for purpose of this case- Deft Nelson present Legal Aid assigned as counsel for deft Nelson- All defts arraigned and each enter pleas of not guilty- pretrial conference held and concluded all defts O.R.- bail limits to Continental U.S. for all defts-Trial set for 9/29/75 at 9:30 A.M.-All documents to be marked 9/26/75 at 10:00 |
| 6-23-75 | Notices of appearances filed(2) MAKCEY, and TAYLOR) |
| 6-23-75 | Govts Notice of Readiness for Trial filed. |
| 6-26-75 | By WEINSTEIN J - Order appointing counsel filed for deft NELSON |
| 9/17/75 | Before WEINSTEIN, J.- Case called- Motion by deft Mackey for adjournment of trial denied- So Ordered A-7 |

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DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
9-22-75	Stenographers transcript filed dated 9-17-75		
9-24-75	Mailogram filed received from Chambers indicating that trial scheduled to begin on Sept. 29, 1975.		
10-24-75	Letter to ^{from} deft Nelson from ^{to} Judge Weinstein dated 9/22/75 filed re: request for new counsel		
10-24-75	Telegraphic Message from Judge Weinstein to deft Nelson filed re: that deft is required to appear on 9/24/75 etc.		
10-24-75	Before WEINSTEIN, J. - Case called - Deft Nelson and counsel present - David McCarthy substituted in place of Legal Aid as counsel for deft Nelson - bail limits extended to S.D.N.Y. and E.D.N.Y.		
10-26-75	Before WEINSTEIN J - case called - deft TAYLOR & atty present - On motion of AUSA Friedman the Indictment is dismissed as to deft TAYLOR without prejudice.		
10-26-75	By WEINSTEIN J - Order of dismissal filed (TAYLOR)		
10-26-75	Before WEINSTEIN J - case called - defts & attys present - application for adjournment of trial by deft NELSON is denied - An investigator is appointed for deft NELSON & mail copy for deft NELSON in forma pauperis is granted - submit Order - motion by deft NELSON to dismiss counts 16 through 21 is denied - so ordered - Govts Ex. 1 through 37 marked for ident. Trial set for 9-29-75 at 10:00 am,		
10-26-75	By WEINSTEIN J - Order appointing counsel filed for deft Nelson.		
10-29-75	Before WEINSTEIN, J. - Case called - Defts and counsel present - Trial ordered and begun - Defts motion to dismiss - deft Nelson's motion for adjournment of trial for 2 days denied - defts motion that all grand jury minutes be turned over at this time denied - motion by deft Mackey for severance denied - jurors selected and sworn - Govt's motion to dismiss count 13 granted - Trial contd to 9/30/75 at 9:45 A.M.		
10-30-75	Before WEINSTEIN, J. - Case called - Defts and counsel present - Trial resumed trial contd to 10/1/75 at 10:00 A.M.		
10-1-75	Before WEINSTEIN J - case called - defts & attys present - trial resumed - trial contd to Oct. 2, 1975 at 10:00 am.		
10-2-75	Before WEINSTEIN J - case called - defts & attys present - trial resumed - trial contd to Oct. 3, 1975.		
10-3-75	Before WEINSTEIN J - case called - defts & attys present trial resumed - trial contd to Oct. 6, 1975 @ 9:30 am.		
10-6-75	Before WEINSTEIN J - case called - defts & attys present - trial resumed - trial contd to Oct. 7, 1975		

CRIMINAL DOCKET

DATE	PROCEEDINGS
10-7-75	Before WEINSTEIN, J. - case called - defts & attys present - trial resumed - defts individually to dismiss the indictment - court motion to dismiss counts 16 thru 21 is denied; deft motion to dismiss the indictment because of the attorney-client privilege is denied - trial contd to Oct. 8, 1975 at 2:30 PM.
10-8-75	Before WEINSTEIN, J. - case called - defts Mackey & Nelson present - trial resumed - trial contd to 10-9-75.
10-9-75	Stenographers transcript filed dated 9-26-75
10/10/75	By WEINSTEIN, J. - Order of sustenance dated 10/9/75 filed
10/10/75	Before WEINSTEIN, J. - Case called - Defts and counsel present - Trial resumed - Court charges jury - jury retires to deliberate - trial contd 10/10/75 at 9:00 A.M.
10/10/75	Before WEINSTEIN, J. - Case called - Defts and counsel present - trial ed - jury resumes deliberations - trial contd to 10/14/75 at 9:30 A.M.
10/10/75	By WEINSTEIN, J. - Two (2) orders of sustenance filed
10/14/75	By WEINSTEIN, J. - Two (2) orders of sustenance filed
10-14-75	Before WEINSTEIN, J. - case called - defts Mackey & Nelson present with counsels - trial resumed - Jury resumes deliberation at 9:40 am - Order of sustenance signed for Lunch - Verdict ret'd at 6:40 PM - as to deft Mackey, not guilty counts 1 thru 8 and 16 to 21; guilty on counts 9 to 15 incl.; as to deft Nelson not guilty counts 16 thru 21 and guilty counts 1 to 15 incl. sentences adj'd without date - Jury polled - Jury dismissed - trial concluded - motions will be made at time of sentence - briefs to be submitted - bail contd as to each deft.
10-14-75	9 volumes of stenographers transcript filed (pgs 1 to 1421)
10-17-75	Voucher for Expert Services filed (Wm. Nelson)
10-20-75	Letter from David McCarthy dated 10/17/75 filed re: request for transcription of of certain proceedings - rest of
10/20/75	By WEINSTEIN, J. - Order filed that transcript shall be prepared - (on bottom of above letter)
10/29/75	Letter from David Trager dated 10/28/75 filed
11-10-75	Letter of Nov. 5, 1975 filed received from Chambers from counsel Marvin Wolf re deft Jerone Mackey - adjournment to Jan. 5, 1976 granted - Clerk to inform probation - So Ordered by Judge Weinstein.

DATE	RECORDS
1/14/75	By WEINSTEIN, J. - Memorandum and Order filed denying motion to dismiss indictment
1-17-75	Letter filed from Marvin Wolf, Esq. counsel for deft Jerome Mackey (re withdrawal of fact finding hearing etc)
19/75	Letter from David McCarthy requesting adjournment of sentence for deft Nelson- adjournment to 1/15/76 granted (order on bottom of letter)
1/28/75	Letter from Marvin Wolf dated 11/24/75 filed re: permission for deft MACKEY, to travel to N.J. and Penn.- Permission granted by Judge Weinstein (order on bottom letter)
2-5-75	4 Stenographers transcripts filed (one dated Oct. 3, one dated Oct. 9, one dated Oct. 10 and one dated Oct. 14, 1975)
12-8-75	Voucher for expert services filed (Nelson)
2/10/75	Voucher for expert services filed
3-6-76	Notice of Motion filed, ret. Jan. 16, 1976- for judgment of acquittal setting aside the verdict of guilty on for a new trial, etc. (deft Jerome Mackey) & Memorandum in support of motion filed.
-6-76	Notice of Motion filed, ret. Jan. 16, 1976, for an order dismissing the Indictment, directing a new trial etc. (deft Nelson) & Memorandum of Law filed in support of motion etc.
-14-76	Letter filed dated Jan. 13, 1976 from counsel for deft William Nelson David McCarthy, Esq. that sentencing has been adjd to 2-20-76 at 10:30 am. So ordered by Judge Weinstein (see notation on letter)
1-16-76	Before WEINSTEIN J - case called - adjd to 2-20-76 as to sentences for defts Nelson & Mackey. ; motion for Judgment of Acquittal and to set aside verdict adjd to 2-20-76.
2-2-76	Letter filed from Jesse Zaslow, Esq. dated 1-27-76 received from Chambers.
2/9-76	Copy of letter from Douglas J. Kramer dtd 2-4-76 re statements filed.
2/20-76	Before WEINSTEIN J - case called - deft NELSON & counsel D. McCarthy present. Deft SENTENCED to set aside the verdict is denied. Deft sentenced to 5 years imprisonment pursuant to 18:3651 on each of counts 1 thru 15 incl., to run concurrently. Deft to serve 6 months and execution of remainder of sentence is suspended and the deft is placed on probation for 4 1/2 years. Stay of execution of sentence is granted pending appeal. Deft MACKEY & counsel Marvin Wolf present - defts motion to set aside the verdict is denied - deft sentenced to 5 years imprisonment pursuant to 18:3651 on each of counts 9, 10, 11, 12, 13, 14 & 15 to run concurrently. Deft to serve 6 months and execution of remainder of sentence is suspended and the deft is placed on probation for a period of 4 1/2 years. Stay

75 CR 468
CRIMINAL DOCKET

DATE	PROCEEDINGS
	of execution of sentence is granted pending appeal.
36 2-20-76	Judgment and Commitment filed for debts MACKEY & NELSON - Certified copies to Marshal for both debts.
37 2-25-76	Notice of Appeal filed (Nelson) without fee.
2-25-76	Docket entries and duplicate of Notice of Appeal mailed to the Court of Appeals.
38 2-26-76	Notice of Appeal filed (Mackey)
2-26-76	Docket entries and duplicate of Notice of Appeal mailed to the Court of Appeals (Mackey)

UNITED STATES DISTRICT COURT

UNITED STATES OF AMERICA,

Docket Number 75 Cr 468

-against-

Hon. Jack B. Weinstein

Jerome Mackey
William Nelson, Defendant.

William Nelson, Appellant.

NOTICE OF APPEAL

Notice is hereby given that William Nelson appeals to the United States Court of Appeals for the Second Circuit from the ☒ Judgment ☐ Order ☐ other (specify) entered in this action on February 20, 1976.

Date 2/24/76
To Mr. Lewis Orgel
Clerk of the Court
Eastern District of New York
Brooklyn, New York

DAVID W. MCCARTHY
(Counsel for Appellant)
Address: MCCARTHY AND DORFMAN
1527 Franklin Avenue
Suite 310
Manhasset Neck, New York 11501
(516) 746-1616

Phone Number

ADD ADDITIONAL PAGE IF NECESSARY
(TO BE COMPLETED BY ATTORNEY)

QUESTIONNAIRE

- ☐ I am ordering a transcript
☒ I am not ordering a transcript
Reason:
☒ Daily copy is available
☐ U.S. Attorney has placed order
☐ Other. Attach explanation

TRANSCRIPT ORDER

- Prepare transcript of:
☐ Pre-trial proceedings
☐ Trial
☐ Sentence
☐ Post-trial proceedings

The ATTORNEY certifies that he will make satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 10(b)) Method of payment: ☐ Funds ☐ CJA Form 21

ATTORNEY'S signature

DATE

COURT REPORTER ACKNOWLEDGEMENT

Date order received

Estimated completion date

To be completed by Court Reporter and forwarded to Court of Appeals.

Estimated number of pages.

Date

Signature

(Court Reporter)

ORIGINAL

A-12

REQUEST # 9

GOOD FAITH BELIEF IN TRUTH OF STATEMENT

If the evidence in the case leaves you with a reasonable doubt whether the defendant in good faith believed the allegedly fraudulent statement to be true at the time that any mailing was made with regard thereto, then the jury should acquit.

Fraudulent intent is one of the essential elements of the offenses with which the defendants are charged. Fraudulent intent is not presumed or assumed; it is personal and not imputed. One is chargeable with his own personal intent, not the intent of some other person. Bad faith is an essential element of fraudulent intent. Good faith constitutes a complete defense to one charged with an offense of which fraudulent intent is an essential element. One who acts with honest intention is not chargeable with fraudulent intent. One who expresses an opinion honestly held by him, or a belief honestly entertained by him, is not chargeable with fraudulent intent even though such opinion is erroneous and such belief is a mistaken belief. Evidence which establishes only that a person made a mistake in judgment or an error in management, or was careless, does not establish fraudulent intent. In order to establish fraudulent intent on the part of a person, it must be established that such person knowingly and intentionally attempted to deceive another. One who knowingly and intentionally deceives another is chargeable with fraudulent intent notwithstanding the manner and form in which the deception was attempted.

CONTINUATION OF REQUEST # 9

In this context you may consider that defendant Nelson had only been working as a salesman for a short time when Fisher and Taylor installed the major label tapes "pitch", and that Fisher testified that he had been unaware that there was any difference between legitimate and duplicate tapes after he had been a salesman for over six months. You may also take into account defendant Nelson's reliance on the initial opinions of Jerome Mackey's attorneys that the sale of duplicate tapes was legal and Fisher's testimony about a Federal Trade Commission ruling to the same effect. You may consider the fact that defendants' Nelson and Mackey made a fraud complaint to the Nassau County District Attorney's Office and that defendant Nelson cooperated with the Postal Authorities.

AUTHORITY: 1 DEVITT and BLACKMAR, supra, 440.13; United States v. SIMON, 425 F.2d 796 (2d Cir. 1970); United States v. BLOSSER, 440 F.2d 697 (10th Cir. 1971); United States v. AMMONS, 464 F.2d 414 (8th Cir. 1972); SHALL v. United States, 388 F.2d 616 (5th Cir. 1968).

THE CHARGE OF THE HONORABLE JACY B. WEINSTEIN

THE COURT: Ladies and gentlemen:

I am now going to tell you what the law is. I want you to follow my instructions, but you will decide the facts.

I have no view of the guilt or innocence of these two defendants. My sole purpose and desire is to see that they are fairly tried, and nothing I have said or done should be used by you in inferring any feeling that I may have about the guilt or innocence. You will decide the case solely on the evidence before you and the law.

The fact that the prosecution was brought in the name of the United States is of no significance. The United States is entitled to no more help or weight than any other litigant. Everyone, the government and individuals, are equal in this court. Nobody is entitled to extra consideration and nobody is entitled to any sympathy.

The indictment, as I have told you, is an accusation in writing. It is not evidence

1
2 and it is entitled to no weight in your
3 deliberations.

4 Each defendant has pleaded not guilty.

5 The government has the burden of proving
6 guilt beyond a reasonable doubt with respect to
7 each element of each offense charged. This
8 burden never shifts and remains on the government
9 throughout the trial.

10 A defendant does not have to prove his
11 innocence, he need not submit any evidence at
12 all.

13 A defendant need not take the witness
14 stand and you may draw no inference unfavorable
15 to him because he does not testify. You may
16 not consider the fact that a defendant did not
17 testify.

18 A presumption of innocence remains with
19 a defendant throughout the trial and will be
20 considered by you in your deliberations.

21 A reasonable doubt means a doubt
22 sufficient to cause a prudent person to hesitate
23 to act in the most important affairs of his life.
24 A reasonable doubt may result from the evidence
25 produced or from failure to produce evidence.

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1
2 Finding an individual to be guilty
3 of committing a felony and subjecting him to
4 the possibility of criminal penalties is most
5 serious and you will consider this fact in
6 determining whether you have a reasonable doubt.
7 Nevertheless, if at the end of the trial you
8 are convinced beyond a reasonable doubt that a
9 defendant is guilty of a crime as charged, then
10 you should find him guilty of that crime.

11 Mr. Mackey and Mr. Nelson are charged
12 with violating two provisions of the United
13 States Code, Section 1341 and Section 2 of
14 Title 18.

15 There are a number of dates in the
16 indictment, but the precise date need not be
17 proven, an approximation is sufficient. The
18 relevant portion of Section 1341, which is
19 known as the mail fraud statute, reads as
20 follows:

21 "Whoever, having devised or intending
22 to devise any scheme or artifice to defraud,
23 or for obtaining money or property by means
24 of false or fraudulent pretenses, representations,
25 or promises . . . for the purpose of executing

1
2 such scheme or artifice or attempting so to
3 do, places in any post office or authorized
4 depository for mail matter, any matter or
5 thing whatever to be sent or delivered by the
6 Postal Service, or takes or receives therefrom,
7 any such matter or thing, or knowingly causes
8 to be delivered by mail according to the
9 direction thereon, or at the place at which it
10 is directed to be delivered by the person to
11 whom it is addressed, any such matter or thing,
12 "shall be guilty of an offense against the laws
13 of the United States."

14 Now I will explain the meaning of this
15 provision in some detail, but what you should
16 note for the moment and bear in mind is the
17 gist of the offense which is charged in the
18 indictment is the willful misuse of the mails
19 in carrying out or attempting to carry out a
20 scheme to defraud as charged. The mails must
21 have played a significant part in enabling
22 the defendant to carry on a fraudulent scheme.
23 Use of the mails must be an integral part of
24 the mode of operations. The reason for that
25 is if it isn't, then the prosecution doesn't

1
2 belong in the Federal Court, and that is why
3 it is here.

4 Section 2 of Title 18 of the United
5 States Code reads as follows:

6 "Whoever commits an offense against
7 the United States or aids, abets, counsels,
8 commands, induces or procures its commission,
9 is punishable as a principal."

10 "Whoever willfully causes an act to
11 be done which if directly performed by him or
12 another would be an offense against the United
13 States, is punishable as a principal."

14 That is the aider and abettor provision
15 of the law, and I will explain that to you in
16 a moment. But you will note that Section 2
17 permits the guilt of a defendant to be
18 established without proof that he personally
19 did every act constituting the offense if he
20 aided and abetted another in the commission of
21 a crime and had the requisite criminal intent.

22 The indictment charges twenty distinct
23 crimes for counts, and you must consider each
24 count separately as to each defendant.

25 Richard Taylor is mentioned as a defendant in

1
2 the indictment, but as you already know he
3 is not on trial here.

4 The guilt or innocence of each separate
5 defendant must be considered separately by you.
6 You must not permit yourselves, in considering
7 the evidence, to treat the several defendants
8 on trial as a single entity or unit. You are
9 required to consider the guilt or innocence of
10 each of them as individuals and distinct from
11 one another and they are entitled to that
12 careful consideration. But of course if you
13 find that they have cooperated or worked together
14 in some way, you may take any such relationship
15 that they have into account.

16 The defendants are on trial only for the
17 acts or offenses charged in the indictment, and
18 you may not convict a defendant of any other act
19 or offense based on the evidence of other
20 uncharged acts or offenses; so if you think they
21 did something else wrong, it might or might not
22 be in your mind a crime, but that is not what
23 you are here for, you are just here to try the
24 crimes that are charged

25 Now let me read you the indictment, it

1
2 is a rather long indictment, and what I have
3 done is I have had a Xeroxed copy made that
4 will help you in your consideration and you
5 will be able to take it in with you and you
6 will see each count, and then you will come
7 in and you will be asked:

8 As to Count One as to the defendant
9 Mackey, guilty or not guilty?

10 Then, As to the defendant Nelson,
11 guilty or not guilty?

12 Then you will be asked as to Count Two
13 and Count Three and all along the line, then
14 these other counts with respect to the mailing
15 back of checks, and you will be able to take
16 this in with you (indicating). I will give it
17 to the clerk and he will give it to you,
18 Madam Forelady, as soon as I tell you to
19 deliberate.

20 Incidentally, I have also had prepared
21 this defendant exhibit list which shows all the
22 defendants' exhibits, so if you want any exhibit
23 you can refer to it by letter in a note, or you
24 can ask for all of them, whichever you prefer.

25 Also the government's exhibit list, the

1
2 same, and the witnesses called by the govern-
3 ment in case you should want some of the
4 testimony read.

5 Try to be very precise, after all, we
6 don't want to re-read the whole record and
7 sit here a week while we re-read everything,
8 so unless you really need it don't ask for it
9 and then try to be precise.

10 Then the witnesses called by the
11 defendants.

12 So you will have all of these lists
13 with you.

14 The clerk will also supply you with
15 pencil and paper so you can work readily.

16 Now let me read you the whole indictment,
17 as I say, it is a long one.

18 First, Counts One through Fifteen - -

19 Does counsel want me to read all the
20 indictment in view of the fact that I am going
21 to send it in?

22 MR. MC CARTHY: I don't feel it is
23 necessary.

24 MR. WOLF: I don't, either.

25 THE COURT: What do you think?

1
2 MR. FRIEDMAN: No, your Honor.

3 THE COURT: Let me just summarize it
4 for you.

5 It charges that Mr. Mackey was president
6 and Mr. Taylor was vice-president;

7 That Mr. Nelson was secretary-treasurer
8 of Mackey;

9 That this was a corporation organized
10 and that beginning around April 1972 until
11 about March of 1973 Mackey and Nelson knowingly
12 and willfully devised and intended to devise a
13 scheme to defraud prospective stereo tape
14 distributors and that as part of the scheme they
15 started this distributorship, Mackey Distributors,
16 Inc., and that they caused advertisements to be
17 placed in various newspapers and attempted to
18 induce people to purchase stereo tape distributor-
19 ships telling them that there would be professional
20 locators, and other aspects, including that they
21 would make approximately a dollar on each sale
22 of tape and that the cabinets would be restocked,
23 and the like;

24 That major label, first quality tapes
25 would be supplied, that skilled professional

1
2 locators would locate the cabinets, that they
3 would be provided these locations and the
4 tapes and the cabinets within two or three
5 weeks after payment in full;

6 And then there was the one year money-
7 back guarantee and that there would be provision
8 for relocations;

9 That literature was prepared indicating
10 that Mackey Distributors, Inc. was a wholly
11 owned subsidiary of Jerome Mackey Judo, Inc.;

12 That a list of references of purported
13 successful distributors were furnished knowing
14 that they were false;

15 And that various false statements were
16 made when the distributors asked why there had
17 been a failure to perform;

18 And that various advertisements were
19 placed in newspapers.

20 Those are Counts One through Fifteen,
21 but there is no Count Thirteen.

22 For example, Count One charges that on
23 or about August 17, 1972 there was mail from
24 Long Island to Minneapolis Star Tribune,
25 Minneapolis, Minnesota, an advertisement for

1
2 insertion there as a part of the scheme, and
3 then all of these others, and Fifteen is to
4 the Journal Gazette in Ft. Wayne Indiana.

5 Now, Counts Sixteen through Twenty-one
6 re-allege everything in the first counts and
7 alleges that as a part of the scheme they
8 received various pieces of mail. For example,
9 Count Sixteen recites that on or about December
10 14th a check from Paul Suk, and so on, and it
11 is from different people as charged, and you
12 will see that.

13 Now the government, in order to prove
14 guilt under the mail fraud statute, must prove
15 three essential elements beyond a reasonable
16 doubt:

17 First: The act or acts of having devised
18 and having intended to devise a scheme or
19 artifice to defraud certain distributor-
20 customers out of money or credit by means of
21 false or fraudulent representations concerning
22 the product and the services to be provided by
23 Mackey Distributors, Inc., the financial state
24 of Mackey Distributors, and the reason for the
25 company's failure to perform contracts as

1
2 charged in the indictment.

3 The first thing is that they entered
4 into a fraudulent scheme.

5 The second, the act or acts of placing,
6 or causing to be placed, in an authorized
7 depository for mail, envelopes containing
8 advertisements intended to be sent or delivered
9 by the United States Postal Service, as charged
10 in Counts One through Fifteen of the indictment,
11 no Thirteen, and the act or acts of taking and
12 receiving or causing to be taken and receive
13 from the United States mails, and those are the
14 checks in the remaining counts that they received
15 allegedly.

16 Third: The act or acts of so using the
17 United States mails willfully, and with the
18 specific intent to carry out some essential step
19 in the execution of said scheme or artifice to
20 defraud, as charged.

21 Now, in order to convict of any of the
22 crimes charged, you must find that the defendant
23 was a knowing participant in the alleged
24 fraudulent scheme at the time of the mailing.
25 If he became aware of the fraud after the mailing

1
2 and joined the scheme after that mailing, he
3 cannot be convicted of the prior mailing, but
4 he could be convicted of any subsequent mailing.

5 You see that.

6 The use of the mails must have been
7 necessary to effectively carry out the scheme.
8 In addition, a defendant would have to have
9 knowledge that the use of the mails would follow
10 in the ordinary course of business or reasonably
11 have foreseen that there would be the use of the
12 mails. A defendant would have to know or have
13 reason to believe the same, for example, that
14 the advertising agency would use the mails to
15 place advertisements in newspapers in various
16 parts of the country. Similarly, he would have
17 to know or have reasonably foreseen that the
18 salesmen or customers would mail the checks from
19 various parts of the country to the headquarters
20 on Long Island.

21 The word "scheme" and "artifice," as used
22 in the statute, include any plan or course of
23 action intended to deceive others, and to obtain,
24 by force or fraudulent pretenses, representations,
25 or promises, money from persons so deceived.

1
2 A statement or representation is
3 false or fraudulent within the meaning of the
4 statute, if known to be untrue, and made or
5 caused to be made with the intent to deceive.

6 You may ask yourself, for example, did
7 defendants offer major label tapes, top-tune
8 tapes intending not to supply them? I think
9 that is fairly evident. We all, I think, know
10 what fraud is in this general sense.

11 A statement is false if it was untrue
12 when made, and was then known to be untrue by
13 the person making it or causing it to be made.

14 A "false or fraudulent representation"
15 may be made by statements of half-truth or the
16 concealment of material facts or by innuendo
17 as well as by affirmative statements or acts.

18 The use of the United States mails in
19 furtherance of the scheme to defraud is an
20 essential element of the offense charged. It
21 is not necessary that the defendant do any
22 actual mailing. It is sufficient if the mails
23 were in fact used to carry out the scheme, and
24 if the use of the mails by a participant or
25 somebody else was reasonably foreseeable or was

1 known and to be occurring in the usual and
2 regular course of that scheme, necessarily.
3 The use of the mail must bear a substantial
4 relationship to the scheme. Under the statute
5 the sending or receiving of mail must be for
6 the purpose of executing the scheme. Thus you
7 must find that the mailings played a significant
8 part in enabling the defendants to obtain money
9 fraudulently, that is if you decide, of course,
10 that they did obtain money that way.
11

12 Incidentally, it is not necessary that
13 a defendant actually himself receive money if
14 he is a part of the scheme, if he is, if he
15 wants to benefit himself or another, that is
16 sufficient.

17 In order for the defendants to be guilty
18 of Counts One through Fifteen, it is necessary
19 that the elements in the case establish beyond
20 a reasonable doubt that the envelopes containing
21 the advertisements were willfully mailed, or
22 caused to be mailed by the accused, with the
23 intent to help carry out some essential step
24 in the execution of the scheme to defraud
25 alleged in the indictment. Similarly, for

1
2 Count Sixteen through Twenty-one, it must
3 be established that the defendants received
4 or caused to be received the checks that are set
5 forth in those counts with the intent that
6 the fraudulent scheme alleged in the indictment
7 would be carried out.

8 And that is willful and intentional if
9 it is done deliberately, and voluntarily, with
10 the specific intent to accomplish something the
11 law forbids - - that is to say, with the bad
12 purpose to disobey or disregard the law.

13 To act with "intent to defraud" means
14 to act knowingly and with the specific intent
15 to deceive, ordinarily for the purpose of either
16 causing some financial loss to another, or
17 bringing about some financial gain to oneself
18 or some financial gain to another - - and I say
19 you don't have to actually gain anything from
20 the scheme in order to be guilty.

21 An act is not knowing if it is committed
22 because of inadvertence, carelessness, negligence,
23 stupidity, or some other non-criminal reason.

24 You should acquit the defendants if
25 you are not satisfied beyond a reasonable doubt

1
2 that they knew of the fraudulent activities
3 of others in the company and permitted these
4 activities to continue when they should have
5 stopped them and had full power to stop them,
6 or that they themselves engaged in such
7 activities.

8 One may not willfully and intentionally
9 remain ignorant of a fact important and
10 material to his conduct in order to escape the
11 consequences of the criminal law.

12 The defendants could not deliberately
13 close their eyes to what was going on around
14 them in order to permit them to contend that
15 they were deceived by their associates.

16 The state of mind of a defendant must
17 be inferred from the circumstances as revealed
18 by the evidence and on the basis of your
19 common sense and general experience.

20 Under the mail fraud statute, each
21 separate use of the mails in furtherance of
22 the scheme to defraud constitutes a separate
23 offense.

24 Now there is a point with respect to
25 what we call venue or the place at which a

1
2 person is accused, and let me say a word
3 about that:

4 175 Fulton Street, in Hempstead - -
5 remember, that was the main offices of Mackey
6 Distributors, Inc. - - is within the Eastern
7 District of New York, that is the district
8 where we sit, and 501 Fifth Avenue and any
9 other addresses in the County of New York are
10 in the Southern District. That is not this
11 district, it is the Southern District of New
12 York, it is a different court, Federal Court.
13 You may not convict a defendant of any offense
14 which took place wholly outside the Eastern
15 District of New York, but an offense begun in
16 one district and completed in another or
17 completed in more than one district may be
18 prosecuted in any district in which such
19 offense was begun or continued or completed. So
20 if it is a substantial part of what was done
21 here, even though a part of it was done elsewhere,
22 then this is the preferred court to try this case.

23 As I told you, Mr. Mackey and Mr. Nelson
24 have also been charged under Section 2 of Title 18.
25 This section permits a defendant to be found

1
2 guilty if you find that he aided and abetted
3 the violation of the mail fraud statute.

4 In order to find aiding or abetting,
5 it is necessary to find that a defendant will-
6 fully and knowingly associated himself in some
7 way with the criminal venture charged and that
8 he willfully participated in it as he would
9 something he wished to bring about.

10 If you want to find out whether a
11 defendant aided or abetted, you must ask your-
12 self such questions as:

13 Did he willfully and knowingly associate
14 himself with a criminal venture which used
15 the mails as a part of a scheme to defraud the
16 distributor-customers of Mackey Distributors?

17 Did he participate in it as something
18 he wished to bring about?

19 Did he seek by his actions to make it
20 succeed?

21 If he did, then he is an aider and
22 abettor and he would be guilty.

23 Whoever aids, abets, counsels, commands,
24 induces or procures the commission of a crime
25 is punishable in the same way as a principal.

1
2 There was evidence in this case of
3 good character. Evidence of a defendant's
4 good character is in the same category as
5 other factual evidence. This must be considered
6 by the jury in its deliberations and may, of
7 itself if believed, create a reasonable doubt
8 where otherwise no such doubt would exist, but
9 you should consider it obviously in connection
10 with all of the other evidence in the case.

11 A critical factual issue, in addition
12 to the mailing issue, is whether a defendant
13 knew that there would be no deliveries of tapes,
14 cabinets and locations as promised, and that
15 then they deliberately continued to take new
16 orders knowing that the new customers would pay
17 their money and not get what they paid for.

18 It is not a crime to fail in business;
19 it is not a crime to be a business man and to be
20 overly optimistic or even to be stupid as a
21 business man. Whether fraud or good faith
22 failure was involved is for you to decide.

23 Now so much for the law.

24 Let me say a few words about the credi-
25 bility of witnesses. You are the sole judges of

1
2 the credibility of the witnesses and the
3 weight that their testimony deserves. The
4 assumption that a witness will speak the
5 truth may be dispelled by the appearance and
6 conduct of the witness, by the manner in which
7 the witness testifies, by the character of the
8 testimony given, or by contrary evidence.

9 You should carefully scrutinize all of
10 the testimony given, the circumstances under
11 which each witness has testified and other
12 matter in evidence which either indicate
13 confirmation or contradiction or indicates
14 that the witness is or is not worthy of belief.

15 Consider each witness' motive, his
16 intelligence or her intelligence, and state of
17 mind, partisanship in the prosecution or defense
18 of the case, the relationship the witness bears
19 to each side and the extent to which there has
20 been support or contradiction. Also, the fact
21 that a witness, and there was one witness
22 formerly a defendant, Mr. Taylor, has been
23 convicted of a crime may be considered by you
24 as evidence of lack of morality which makes it
25 more likely that he will lie on the witness stand.

1
2 Testimony of someone like Fisher or
3 Taylor needs to be carefully scrutinized by
4 you because they testified they were co-
5 conspirators in effect. In the first place,
6 the fact that a witness committed a crime of
7 fraud shows a defect in his character that
8 may have made him more likely to lie on the
9 witness stand. In the second place, he can
10 be punished for his own offense so that he
11 may try to court the prosecutor's favor and
12 avoid some degree of punishment himself by
13 testifying in return for some advantage he
14 expects to receive.

15 If you believe that a witness has will-
16 fully sworn falsely before you with respect to
17 a material fact, you may disregard his or her
18 testimony completely. But, a witness may be
19 mistaken in part and accurate in part, and you
20 have to decide that.

21 Each of you is entitled to your own
22 opinion, but you should carefully and respect-
23 fully, as I am sure you will, listen to each
24 other, and you should not hesitate to change
25 your opinion if you believe somebody else is

1
2 correct.

3 Remember, your decision must be your
4 own.

5 Any verdict must be unanimous.

6 Your oath sums up your duty, and that
7 is without fear or favor to any person, you
8 will well and truly try the issues before these
9 parties according to the evidence given to you
10 in court and according to the laws of the
11 United States.

12 Now I will see you gentlemen at side
13 bar, of course, but is there any reason why I
14 should not now excuse the alternates?

15 MR. FRIEDMAN: No, your Honor.

16 MR. WOLF: No, your Honor.

17 THE COURT: The four alternates are
18 excused.

19 I don't want you to discuss this case
20 with each other or with anybody else until
21 after the verdict is in.

22 Is that clear?

23 Thank you very much.

24 THE CLERK: Tomorrow morning 10:00 o'clock.

25 (At this point the four alternates

1
2 left the courtroom.)

3 THE COURT: All right, gentlemen,
4 may I see you at side bar?

5 (The following occurred at side
6 bar without the hearing of the jury.)

7 MR. MC CARTHY: Judge, I respectfully
8 ex pt to your Honor's addition to Page 5
9 of your Honor's charge, and that is with
10 respect to separate verdicts, it was a comment
11 th : you made that the jury consider the
12 cooperation with each other, and I believe
13 that might be misleading in that it might
14 imply guilt by association.

15 THE COURT: Yes.

16 (Judge Weinstein then addressed the
17 jury as follows):

18 THE COURT: There is no guilt by
19 association, you understand that, merely
20 because people may be related or in business
21 together doesn't mean that they are guilty,
22 that is if one is guilty the other is guilty.
23 I didn't mean to imply that at all.

24 Each person has to be considered
25 separately as to each count.

MACKEY DISTRIBUTORS, INC.

6

175 FULTON AVENUE • HEMPSTEAD • , YORK 11550 • SUITE 209

TEL

TO: All Mackey Distributors, Inc. Distributors
FROM: Mr. Richard E. Taylor, Executive Vice President
DATE: September 22, 1972
SUBJECT: Change in ordering tapes.


Effective immediately, all tape orders from our distributors will be handled by B&G SALES of Hempstead, New York. B&G SALES is your only authorized supplier, in accordance with Paragraph No. 5 of the Repurchase Guarantee in your contract, and all checks for tapes should be made payable to B&G SALES. All privileges of exchange and coverage for defective tapes will remain in effect, but the method of ordering tapes will change. 113

In the future, you will call your orders in to (516) 292-3290, or mail them to our Hempstead office. Allow four or five days for delivery. All orders will be delivered to your home by B&G SALES vans or may be picked up at our Hempstead office, at your option.

It is expected that the above mentioned change will result in a much better percentage of fill on your orders and increased profits to you, because of the availability of special orders.

If you should have any questions concerning the above change, please feel free to call me.

Sincerely,


Richard E. Taylor
Executive Vice President

/cc

MEMORANDUM COMPLAINT

COMPLAINT NO.

5554-72

Mackey Distributors Inc.

483-0146

Jerome Mackey 45 Jackson St. Hempstead
139 E 56 St N.Y.C. Jerome Mackey's Juda. Inc. (212) 543-3880

Wm. J. Nelson 2417 Murray Dr. Mid-West City, OKLA.

can be reached thru C, Phone #

E. Taylor 2100 East 51st Tulsa Oklahoma
- 742-9702. C referred in Jesse Taylor Zedler
DETAILS of 1500 Bury N.Y.C.

Key Distributors Inc. Incorporated in N.Y.S.
Office 175 Fulton Ave Hempstead. Incorporated
Corporation has been sold to Neltay Corp.
CORP.] Sold 12/5/72

was selling the Distributorships, & C
in up to sell further distributorships.
one D, \$6,000

2 & D, were partners in said closed
relation.

one D, the \$6,000 [in various sums at
various dates] in Nassau co. Said money was
by check drawn upon Mackey Dist.
Checks.

got to 2, then knowing C2 who lives
Oklahoma]

-6-72 TIME 3:30

TAKEN BY

TO BE INVESTIGATED?

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D.A. Steiner Advised C. P. A. to go over books.

Further if any complaints come in to Refer same to C's attorney. Mr. Mackey agreed that this could be done.

Presently their assets are only \$18,000 & they have [at least on the books] brought in over \$240,000 in distributorships.

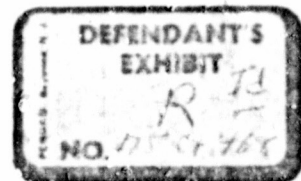
(2) These documents were sold at 1944 for a certain
which included a copy of a letter containing 20
8 inch stereo tapes. The cost of these distribution files
was estimated at a 24% profit for a would-be
the the parent corporation. R.E. Taylor assumes the
man agent of said Corporation William J. Nelson acts
as a chairman for the Corporation.

On Nov 30, 1964 I came into Hempstead, N.Y. for
a meeting with Mr. Taylor & Mr. Mackey having been
informed the preceding week the company was in a
position not being able to fulfill its obligations
to deliver the distributorships it had contracted for.
Mr. Taylor, Mr. Mackey & myself met on Nov. 30, 1964
I set up a meeting for Friday December 1, 1964 to try to set

(1)

(1) By William J. Nelson

Complaint Against
R.E. Taylor
2100 East 51st St
Tulsa, Okla. 74106
918/742-9702



On or about the date of May 1st, 1972 R.E. Taylor
Devin Mackey & William J. Nelson formed a corporation
known as Mackey Distributors Inc. 501 5th Ave. N.Y., N.Y.
& 175 Fulton Ave. Suite 209 Hempstead, N.Y.
It was formed to sell Route Distributorships to sell
Stereo tapes. Though clients placed in different areas
to allow it to be sold weekly by the route distributorships.

by having sold approximately \$2000 worth of
Distributorships which the money has been deposited
The company was supposed to supply
I'm thinking I myself wish to put ourselves on
record as having no knowledge of the situation
as Mr Taylor made all business decisions of the
company as to expenditure of funds. I believe of
The corporation I believe R.E. Taylor did knowingly
authorize overpayments to sales employees of the corp.
authorize them to ~~charge~~ charge hotel bills, expenses
various charges to the corporation without
consulting me or Mr. Taylor which resulted
in the corporation being insolvent.

To the bottom of the situation. On
on Friday Dec. 1st 1972 R.E. Taylor left, supposedly
to go to the office with the man he had put in charge
of sales Lester Fisher. Instead he left town Friday
without notifying anyone. When Mr. Mackey arrived
I told him Taylor had left, as far as I could tell.
We immediately started the Secretary Edie Ciro to
running a preliminary check on all records.
This was completed Dec. 6, 1972. These records show
that on a Gross income of \$273,182.33 There has
been no profit to the company. He has authorized
expenditures in sales over \$100,000. The total of sales
putting the company in an insolvent position

Complaint Against:

R.E. TAYLOR

2100 East 51st Street

Tulsa Oklahoma 74105

Tel # (918) 742-9702

Delone Yacker

45 Hickman St.

Hempstead, N.Y.

on or around May 1st, 1972

a corporation was formed in the State of N.Y.
called Mackey Distributors Inc. Its purpose
was to sell distributorships for the
purpose of displaying and selling 8 track
cassette tapes. This took the form of

5) We feel MR Taylor accepted money for Distribution
ships & money spent the money in other things.

William J. Nelson

all of the stock of Mackey Distributors was
initially held by a public co. (one the same)
"Mackey Distributors, Inc." all of the stock
of Mackey Distributors, Inc. has subsequently
been sold to "Mellay Corp" ^(a new corp) which is the
present owner of Mackey Distributors, Inc.

The initial business of
Mackey Distributors, Inc. was supervised by
the parent company for perhaps 60 days
after which it came to my attention
that there may be a violation of
certain civil laws in the distribution

display cabinets which were stocked with
40 tapes each then located in some store,
gas station etc. The distributor's job
was to replace the sold tapes on a weekly
or bi-weekly basis and share in the
profits of the tapes sold.

Mackey Distributors, Inc. was
to receive an initial fee of approximately
\$1200 for 10 locations which would include
the cabinets located in place and stocked
with 40 tapes.

~~That has been the only business~~
that has been conducted.

that I had better leave the evidence and that any further sales of tapes are distributorships must include only tapes from legitimate sources called "cut outs".

He agreed that he would proceed on that basis. Approximately 30 days later it

came to my attention that he was not proceeding according to my directions but was continuing to sell "policy tapes". I informed him at that time that I wanted to direct myself of the entire company and he agreed to buy it which William Nelson

of stock exchange tapes that were not distributed by the major labels. I spoke to an atty Milton Rosenblum of N.Y.C. who specializes in this aspect of the law and he did an extensive study of the problem. His conclusion was that the distribution of so called "policy" tapes was in fact a present violation of the law although a clarification was probable from the Supreme Court within 12 to 18 mos.

at this point I informed R.E. Taylor who was ~~the~~ acting as Vice President of Mack, Radio, Inc.

7.
even though they paid in full for such
cabinets. In checking the records it
appears that money received for that
purpose was instead used for other
purposes including paying expenses and
sales commissions in excess of the normal
~~amount~~ amt. and incurring hotel bills, office
expenses and telephone bills far in excess
of the company's ability to pay. In
addition he put himself on a large
salary without distribution equally to
the other principals in the business.
That such equal distribution takes place

6.
who is my uncle and who initially approached me
with the deal.

a period of stocking took place
until eventually last Friday (Jan, 1972)
R.E. Taylor refused to purchase the co. and
submitted his resignation. The co. was
subsequently sold to "Keltay Corp".

In checking the records it
now appears that R.E. Taylor while
acting as head of Mackay Distributors &
supervised a fraud on individuals who
purchased distributorships in that he
could not deliver cabinets and tapes to them

it would have brought to head much sooner that an imbalance in corporate cash flow was evident. Instead he took incoming cash to pay the most pressing obligations suited the company now has approximately \$10,000 in its accounts but approximately \$5,000 in obligations. It cannot deliver its obligations.

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John M. M. M.

DEFENDANT'S EXHIBIT LIST

EXHIBIT

DESCRIPTION

A

B

C Three checks on Mackey Distributors, Inc. - Check #16 dated 11/22/72 to MTM Sales Corp. - \$500
Check #103 dated 12/1/72 to William Gunsel - \$200
Check #59 dated 11/18/72 to Squire Grill - \$1000 (Cash)

D Check #593 to Squire Grill dated 11/13/72-\$400-(Cash)

E Three checks on Mackey Distributors, Inc. on account number 0210-0148-005-013842

F Three checks on Mackey Distributors, Inc.
One to Dallas McCoy dated 11/8/72 - \$2170.00
Check #22 dated 11/20/72 to MTM Sales Corp - \$732.00
Check #109 dated 12/1/72 to MTM Sales Corp - \$924.00

G Letter from Taylor advising distributors to purchase tapes from B&G Sales dated 9/22/72.

H Two Mackey Distributors, Inc. checks
Check #5 for \$1000 to Edward Smith
Check #120 dated 11/22/72 for cash \$574.26

I Letter from Taylor dated 12/1/72 changing warehouse lease to MTM Sales Corp.

J Two checks - \$106 from Mackey's Distributors, Inc. dated 12/1/72 to B & J Fixtures - \$2662.50
Check dated 12/1/72 to L. H. Fisher - \$1000.

K Mackey's Distributors, Inc. check #578 dated 11/15/72 to Lester H. Fisher - \$50.00.

L Letter from Taylor dated 8/22/72 to Long Island Better Business Bureau

M Letter dated 12/8/72 from Mackey to Fisher.

N Two checks from Taylor to Fisher both dated 11/17/72 each for \$1000.00.

O Check #508 dated 10/27/72 to B & J Fixture - \$1686.67
Check #525 dated 11/2/72 to Robert McGovern - \$2000.00

Exhibit

Description

P	Memo prepared by Edith Ciro
Q	
R	
S	
T	Copies of Shipping Invoices to Gene Taylor
U	Letter from Jesse Vazlav, Esquire to Mr. Matser dated 4/25/73
V	Three checks from Taylor on M T M Sales Corp. to B & G Sales.
W	BATCH OF NUTLEY CHECKS
X	CAPLIFIED COPY OF CERTIFICATE OF INC. OF M T M.

GOVERNMENT EXHIBITS I. EVIDENCE

- 15(c) Taylor letter of resignation.
- (d) Letter of understanding between United States Attorney and Richard Taylor.
- (e) Contract 10/1/72.
- (f) Contract 11/1972
- 17(a) 3 pages of Mackey Distributors, Inc. literature.
- (b) Other Mackey Distributors, Inc. literature.
- 18. Jerome Mackey's Judo Inc. financial statement.
- 19. Stereo tape catalog.
- 20. Mackey Distributors, Inc. corporate resolution 4/21/72.
- 20(a) Mackey Distributors, Inc. corporate resolution 8/13/72.
- (b) Mackey Distributors, Inc. corporate resolution 12/8/72.
- (c) Signature card of Mackey Distributors, Inc. (442)
- (d) Signature card of Mackey Distributors, Inc. dated 12/8/72.
- (e) \$5,000 - Mackey Distributors, Inc. check payable to Jerome Mackey's Judo Inc. dated 5/16/72.
- 21. Letter dated 12/31/72 of William Nelson to bank.
- 22. Neltay Corp. signature card.
- 22(a) 14 pages of Neltay Corp. bank statement.
- (b) Certificate of incorporation of Neltay Corp.
- 23. 20 checks of Neltay Corp.
- 23(a) 4 checks and 1 debit memo of Neltay Corp.
- 24. Promissory note.
- 24(a) Assignment of Commissions of Mackey Distributors, Inc.
- (b) Closing statement.
- (c) Assurance of compliance.
- (d) J. L. Diamond letter dated 5/8/72.
- (e) J. L. Diamond check for \$5,000.

(f) Loan agreement.

- 25. Sales agreement of Brodie - 2 pages.
 - (a) Sales agreement of Brodie - 6 pages.
 - (b) Brodie check.
- 26. Thomas Connors contract.
 - (a) Newspaper advertisement.
 - (b) Connors check.
 - (c) Readers Digest.
- 27 (a) Fred Cole check.
 - (c) Newspaper advertising.
- 28. John Metzger contract.
 - (a) John Metzger check.
 - (b) Newspaper advertising.
 - (c) Overdrafts.
- 29. Mort Flynn contract.
 - (a) Mort Flynn check.
 - (b) William Nelson letter to Mort Flynn dated 1/9/73.
 - (c) Newspaper advertising.
- 30. Paul Suk contract.
 - (a) Paul Suk check.
 - (b) Zaslav letter.
 - (c) Suk letter.
- 31. Dale Webb contract.
 - (a) Dale Webb check.
 - (b) MDI letter to Dale Webb dated 11/22/72.
- 34. William Mellody contract.
 - (a) William Mellody check.
- 35. Dennis Anderson contract.
 - (a) Dennis Anderson check. A-52

- (b) Letter dated 9/28/72.
- (c) Letter dated 11/4/72.
- (f) Return receipt 11/6
- (g) Return receipt 12/5
- 36. Donald Anderson contract.
 - (a) Donald Anderson check.
 - (b) 1 check.
 - (c) 1 check.
 - (d) Newspaper advertising.
- 37. Russell Read contract.
 - (a) Russell Read check.
- 39(a) Group of advertising and copy.
 - (a)(1) Advertisement sent to Minneapolis Star & Tribune, Minn.
- 41(b) Edith Ciro accounting sheet of Mackey Distributors, Inc.
- 43. Certificate of incorporation of Mackey Distributors, Inc.

WITNESSES CALLED BY THE GOVERNMENT

1. R. KIRKWOOD BRODIE, paid \$4750 for a distributorship
2. DALE WEBB, paid \$2600 for a distributorship
3. MORT FLYNN, paid \$4275 for a distributorship
4. MRS. THOMAS CONNORS, paid \$2525 for a distributorship
5. MR. THOMAS CONNORS, paid \$2525 for a distributorship
6. RICHARD TAYLOR, defendant who has pled guilty to scheme alleged in indictment.
7. FRED COLE, paid \$3562.50 for a distributorship
8. JAMES DIAMOND, loaned \$5000 to Mackey Distributors, Inc. May 8, 1972.
9. LESTER FISHER, Sales Manager for Mackey Distributors, Inc.
10. EDITH CIRO, Office Secretary for Mackey Distributors, Inc.
11. PAUL SUK, paid \$5650 for a distributorship
12. WILLIAM BELARISTA, Bank Officer, Franklin National Bank
13. DON ANDERSON, paid \$6338 for a distributorship
14. DENNIS ANDERSON, paid \$2375 for a distributorship
15. RUSSELL READ paid \$3562.50 for a distributorship
16. JOHN METZGER, paid \$9800 for a distributorship
17. WILLIAM MELLODY, paid \$10,000 for a distributorship
18. AL NELSON F & N Advertising Agency

WITNESSES CALLED BY THE DEFENDANTS

- | | |
|-----------------------------------------------|-------------------------------------------------------------------|
| 1. Mr. Steiner
Assistant District Attorney | Stipulated testimony of
Nassau Assistant District
Attorney. |
| 2. Dallas McCoy | B & G principal and distributor |
| 3. Robert McGovern | Mackey Distributor and MTM
principal |
| 4. John Merritt | Owner, Squire Grill |
| 5. William Chambers | Character witness (Nelson) |
| 6. Marvin Charwat | Character witness (Mackey) |

AFFIDAVIT OF SERVICE

CARMELA CARFORA, being duly sworn, deposes and says:
deponent is not a party to the action and is over 18 years
of age and resides at 4 Ruth Dr. Hicksville, New York

On April 26, 1976, deponent served the within
brief and appendix upon David Trager, Esq., the attorney
for the appellee in this action by depositing a true copy
of the same enclosed in a post-paid properly addressed
wrapper in a official depository under the exclusive care
and custody of the United States Postal Service within the
State of New York.

Sworn to before me on
the 29th day of April, 1976

Carmela Carfora
Carmela Carfora

David W. McCarthy
DAVID W. MCCARTHY
Notary Public, State of New York
No. 41-4575115
Qualified in Nassau County
Registered in Queens Co.
Commission Expires March 30, 1978